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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,210	12/15/2000	Barry E. Ambrose	56130.000064	8550
7590		08/09/2006	EXAMINER	
Hunton & Williams		MIRZA, ADNAN M		
1900 K Street, N.W.		ART UNIT		
Washington, DC 20006-1109		PAPER NUMBER		
		2145		

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

09/736,210

Applicant(s)

AMBROSE, BARRY E.

Examiner

Adnan M. Mirza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06/12/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuji et al (U.S. 6,397,258) and Naegeli et al (U.S. 6,574,797).

As per claims 1,20 Tsuji disclosed a method for data transmissions from a server, comprising the steps of - b) determining the maximum bandwidth for the at least one data transmission (col. 6, lines 12-29); c) determining a delay for the at least one data transmission based on the maximum bandwidth specified; and d) transmitting the at least one data transmission after the delay has expired (col. 8, lines 17-21).

However Tsuji did not disclosed in detail a) configuring a maximum bandwidth for at least one data transmission.

In the same field of endeavor Naegeli disclosed the upstream receiver and related hardware components are designed or configured to receive data at the maximum bandwidth at the maximum symbol rate (col. 8, lines 35-38).

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It would have been obvious to one having ordinary skill in the art at the time of the invention was made to have incorporated the upstream receiver and related hardware components are designed or configured to receive data at the maximum bandwidth at the maximum symbol rate as taught by Naegeli in the method of Tsuji to reduce the congestion during transmission of the data packet and allocation of the bandwidth make it more efficient during data transmission.

3. As per claims 2,12 Tsuji-Naegeli disclosed wherein the server comprises a trivial file transfer protocol server (Tsuji, col. 17, lines 22-26).

4. As per claims 3,13 Tsuji-Naegeli disclosed further comprising the step of: e) enabling the user to specify a maximum number of sessions that may be operated substantially simultaneously (Tsuji, col. 17, lines 36-46).

5. As per claims 4,14 Tsuji-Naegeli wherein the delay is based on at least the maximum number of sessions specified (Tsuji, col. 17, lines 36-46).

6. As per claims 5,15 Tsuji-Naegeli disclosed wherein the delay comprises a time delay (Tsuji, col. 8, lines 17-21).

7. As per claims 6,16 Tsuji-Naegeli disclosed wherein the delay is based on at least a number of data transmissions (Tsuji, col. 8, lines 17-21).

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8. As per claims 7,17 Tsuji-Naegeli disclosed wherein the step of determining a delay determines the delay based on at least a data packet size, bandwidth, and number of sessions (Tsuji, col. 8, lines 17-21).

9. As per claims 8,18 Tsuji-Naegeli disclosed wherein the step of determining a delay determines the delay from a formula $D = 1000 * (1 / (B * 1000000)) * 1' * 8 * S$ where D is the delay in milliseconds, B is a bandwidth in megabits per second, P is a data packet size in bytes, and S is a maximum number of sessions (Tsuji, col. 25, lines 1-22).

10. As per claims 9,19 Tsuji-Naegeli disclosed wherein the step of configuring configures the maximum 5 bandwidth based on a desired bandwidth specified by a user (Naegeli, col. 8, lines 35-38).

11. As per claims 10,20 Tsuji-Naegeli disclosed wherein the step of configuring configures the maximum bandwidth based on a predetermined value (Naegeli, col. 8, lines 35-38).

12. As per claim 21,22 Tsuji-Naegeli disclosed wherein the maximum bandwidth is specified by a user (Tsuji, col. 6, lines 12-29).

Response to Arguments

Applicant's arguments filed 12/06/06 have been fully considered but they are not persuasive.

Applicant's argument is as follows.

13. Applicant argued that prior art did not disclose in detail, "determining a delay for the at least one data transmission based on the maximum bandwidth specified".

As to applicant's argument Tsuji disclosed, "data in an amount determined by the product of the standard bandwidth assured (as maximum bandwidth) and the maximum delay time is perfected, thereby making it possible to conceal reading delay with high probability" (col. 8, lines 17-21).

14. Applicant argued that prior art did not disclose, "Wherein the server comprises a trivial file transfer protocol".

As to applicants argument Tsuji disclosed, "A file system for performing file reading and/or file writing out of and/or into a data storage part storing a file upon receipt of file reading request and/or file writing request issued by an application (col. 5, lines 54-58).

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15. Applicant argued that prior art did not disclose configuring a maximum bandwidth for at least one data transmission.

As to applicant's argument Naegeli disclosed the upstream receiver and related hardware components are designed or configured to receive data at the maximum bandwidth at the maximum symbol rate (col. 8, lines 35-38).

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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17. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Adnan Mirza whose telephone number is (571)-272-3885.

18. The examiner can normally be reached on Monday to Friday during normal business hours. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571)-272-3933. The fax for this group is (703)-746-7239. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866)-217-9197 (toll-free).

AM

Adnan Mirza

Examiner


JASON CARDONE
SUPERVISORY PATENT EXAMINER